

**Before the
Federal Communications Commission
Washington, DC 20554**

_____)	
In the Matter of)	
)	
Winstar Communications, LLC)	
Emergency Petition for Declaratory Ruling)	WC Docket No. 02-80
Regarding ILEC Obligations to)	
Continue Providing Services)	
_____)	

COMMENTS OF CAVALIER TELEPHONE, LLC

Pursuant to the Commission’s Public Notice, Cavalier Telephone, LLC (“Cavalier”) respectfully submits these comments in support of the Emergency Petition for Declaratory Ruling of Winstar Communications, LLC Regarding ILEC Obligations to Continue Providing Services.

Cavalier was founded in late 1998 and first began providing facilities-based local telephone services in July 1999 in Virginia, where it now serves over 150,000 access-line equivalents. Its subsidiary, Cavalier Telephone Mid-Atlantic, LLC, provides facilities-based local telephone service to both residential and business customers in the mid-Atlantic region of New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia.

On November 15, 2001, Cavalier entered into an asset purchase agreement with Net2000 Communications, Inc. and its affiliates (together, “Net2000”). On November 16, 2001, Net2000 filed a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code in U.S. Bankruptcy Court for the District of Delaware, Case No. 01-11324 (MFW). Cavalier sought to work with

the operating subsidiaries of Verizon Communication (singly or together, “Verizon”) to facilitate the transfer of customers from Net2000 to Cavalier. Verizon first agreed to accommodate the transfer of these customers, as it had done when Cavalier had acquired customers from other carriers such as Conectiv Communications, Inc. and Broadstreet Communications.

However, in December 2001, when this transfer was actually scheduled to begin, Verizon’s operations personnel contacted Cavalier’s engineering staff and told them that Verizon would not be transferring the customers, on advice of Verizon’s counsel. Cavalier asked Verizon to go through with the transfer, but Verizon refused, using its control of last-mile facilities to block Cavalier’s efforts. Verizon claimed that Cavalier’s effort to continue service with Verizon, until the transfer could be completed, meant that Cavalier had agreed to keep the customers on special access services purchased from Verizon by Net2000, for the full term of Net2000’s contracts with Verizon.

Verizon initially refused outright to transfer customers from Net2000 to Cavalier, forcing Cavalier to seek emergency relief before the Virginia State Corporation Commission and the Maryland Public Service Commission. Verizon dropped some of its objections on March 4, 2002—the same day that its response was due to Cavalier’s emergency petition in Virginia. However, at that time, Verizon still refused Cavalier’s request to submit orders in a spreadsheet format, rather than as individual orders for each line, and also insisted on processing the orders as orders for new service, raising the nonsensical issue of “no facilities” for Cavalier to serve a customer still being served by Net2000.

Apparently because of the large number of individual orders submitted by Cavalier, Verizon later agreed to process orders on a spreadsheet basis, and the transfer of customers finally began to proceed, although still not without problems.

Meanwhile, in the bankruptcy proceedings, Verizon had filed an Emergency Motion seeking an order from the Bankruptcy Court requiring Net2000 and/or Cavalier to cure all outstanding defaults allegedly due and owing under Verizon's agreements with Net2000. The Bankruptcy Court denied that Emergency Motion in a February 8, 2002 bench ruling and a February 13, 2002 Order. Verizon has appealed that decision to the U.S. District Court for the District of Delaware, in Civil Action No. 02-146 RRM.

By its conduct, Verizon has sought to impede what should have been a seamless transfer of customers from Net2000 to Cavalier. In the process, Verizon has imposed additional costs on Cavalier and sought to defeat the purpose of the asset purchase agreement between Cavalier and Net2000. While claiming in proceedings under 47 U.S.C. § 271 that local markets are open to competition, Verizon has proved in practice and in other proceedings that the opposite is true. In fact, it appears that Verizon is not content to drive a growing number of competitors out of business and into bankruptcy, but also seeks to use its control of last-mile facilities to frustrate and delay any transfer of customers from bankrupt to surviving competitors.

Cavalier therefore respectfully submits that the Commission should grant the relief requested by Winstar Communications, LLC and put a halt to such inequitable and unlawful conduct.

Respectfully submitted,

Stephen T. Perkins
Cavalier Telephone, LLC
2134 West Laburnum Avenue
Richmond, Virginia 23227-4342
Telephone (804) 422-4517
Fax (804) 422-4599
E-mail: sperkins@cavtel.com

Counsel for Cavalier Telephone, LLC

April 29, 2002